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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

DONTE PICOU, on behalf of himself and
others similarly situated,

Plaintiff,

v.

TRACY LOGISTICS LLC, an entity of
unknown form; and DOES 1 through 50,
inclusive,

Defendants.

CASE NO. 2:24-cv-00526-MCE-JDP

**STIPULATION TO EXTEND TIME FOR
DEFENDANT TO RESPOND TO
PLAINTIFF'S SECOND AMENDED
COMPLAINT TO FACILITATE MEET
AND CONFER REGARDING MOTION TO
DISMISS OR STRIKE SAME**

Filed Under Separate Cover:

[PROPOSED] ORDER

RECITALS

WHEREAS, on January 17, 2024, Plaintiff Donte Picou filed a First Amended Class Action Complaint (“**FAC**”) in San Joaquin County Superior Court against Defendant Tracy Logistics LLC (“**Tracy**”) (hereinafter, the “**State Court Action**”) [Dkt. #1];

WHEREAS, on February 20, 2024, Tracy timely removed the State Court Action to this Court [Dkt. #1];

WHEREAS, on March 12, 2024, Tracy filed its Motion to Dismiss and/or Strike Plaintiff’s FAC pursuant to Fed. R. Civ. P. 12(b)(6) and/or 12(f) (the “**Motion**”), which was scheduled to be heard on April 18, 2024 [Dkt. #13];

WHEREAS, on March 19, 2024, Plaintiff and Tracy (collectively, the “**Parties**”) stipulated to continue the hearing on the Motion by six weeks to May 30, 2024, in order to facilitate the Parties’ conferral efforts to potentially resolve the Motion in whole or in part, and afford Plaintiff sufficient time to evaluate how to propose amending the FAC (the “**Stipulation to Continue**”) [Dkt. #14];

WHEREAS, the Court (Nunley, J.) entered its Order approving the Stipulation on March 20, 2024 (the “**Order**”) [Dkt. #15];

WHEREAS, pursuant to the Order, Plaintiff was to provide Tracy’s counsel with a proposed Second Amended Complaint (“**Proposed SAC**”) on or before March 26, 2024, in order to facilitate the Parties’ conferral about potential resolution of the Motion [Dkt. #15];

WHEREAS, rather than providing Tracy’s counsel with Plaintiff’s Proposed SAC, Plaintiff instead filed a Second Amended Class Action Complaint (“**SAC**”) on March 26, 2024 [Dkt. #16];

1 WHEREAS, Defendant's position is that Plaintiff did not have leave of court to file a SAC;

2
3 WHEREAS, the Parties would like an opportunity to confer about the sufficiency of the SAC
4 vis-à-vis the grounds asserted in the Motion and/or as may be newly raised by the SAC;

5
6 WHEREAS, in light of the filing of the SAC, the Court (Nunley, J.) *sua sponte* denied the
7 Motion as moot [Dkt. #18], irrespective of whether Plaintiff had leave to file the same;

8
9 WHEREAS, based on the foregoing and pursuant to Fed. R. Civ. P. 15(a)(3), Tracy's
10 deadline to respond to Plaintiff's SAC is April 9, 2024; and

11
12 WHEREAS, the Parties wish to afford themselves sufficient time to confer anew about
13 Tracy's contemplated motion(s) to dismiss and/or strike Plaintiff's SAC pursuant to Fed. R. Civ. P.
14 12(b)(6) and/or 12(f) and the possibility of Plaintiff further amending the SAC to address certain of
15 the factual and legal issues raised anew by Tracy concerning the sufficiency of that pleading;

16
17 WHEREAS, to facilitate such conferral, the Parties agree that Tracy's current April 9, 2024
18 deadline to respond to the SAC should be extended by 30 days to and including May 9, 2024, in
19 order to potentially narrow the legal issues and/or pleading challenges that might ensue and whether
20 Plaintiff may further amend the SAC and the Parties may stipulate to the filing of a Third Amended
21 Complaint.

22
23 **STIPULATION**

24 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between
25 Plaintiff, on the one hand, and Tracy, on the other hand, by and through their respective undersigned
26 counsel, and subject to the Court's approval, that:

1. Tracy's time within which to answer or otherwise serve and file any motions or other pleadings responsive to Plaintiff's SAC be extended by 30 days, to and including May 9, 2024; and

2. By entering into this Stipulation, the Parties do not waive and expressly reserve all claims, defenses, and challenges in this action, including, without limitation, as to Plaintiff's SAC and/or the claims asserted therein.

IT IS SO STIPULATED.

Dated: April 5, 2024

D.LAW, INC.

By: /s/ Roman Shkodnik (as authorized on 4/5/24)

Emil Davtyan
David Yeremian
Roman Shkodnik
Amanda Fazio

Attorneys for Plaintiff DONTÉ PICO

Dated: April 5, 2024

BAKER & HOSTETLER LLP

By: /s/ Matthew C. Kane

Matthew C. Kane
Sylvia J. Kim
Amy E. Beverlin
Kerri H. Sakaue

Attorneys for Defendant TRACY LOGISTICS LLC

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TRACY LOGISTICS LLC, an entity of
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**[PROPOSED] ORDER GRANTING
STIPULATION TO EXTEND TIME FOR
DEFENDANT TO RESPOND TO
PLAINTIFF'S SECOND AMENDED
COMPLAINT TO FACILITATE MEET
AND CONFER REGARDING MOTION TO
DISMISS OR STRIKE SAME**

ORDER

Having reviewed and considered the parties' Stipulation to Extend Time for Defendant to Respond to Plaintiff's Second Amended Complaint to Facilitate Meeting and Conferring Thereon (the "Stipulation"), and good cause appearing for granting the relief requested therein, the Stipulation shall be and hereby is GRANTED as follows, using the same terms as defined and used in the Stipulation:

1. Tracy's time within which to answer or otherwise serve and file any motions or other pleadings responsive to Plaintiff's SAC shall be and hereby is extended by 30 days, to and including May 9, 2024; and
2. By entering into this Stipulation, the Parties do not waive and expressly reserve all claims, defenses, and challenges in this action, including, without limitation, as to Plaintiff's SAC and/or the claims asserted therein.

IT IS SO ORDERED.

DATED: APRIL 9, 2024


MORRISON C. ENGLAND, JR.
SENIOR UNITED STATES DISTRICT JUDGE